

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

HENRY T. PIETRASZEK,

Defendant.

JUDGE JOAN H. LEFKOWITZ

Case No.

01-cv-4047

MAGISTRATE JUDGE ROSEMOND

DOCKETED

JUN 01 2001

COMPLAINT

Plaintiff Securities and Exchange Commission ("Commission") alleges the following:

1. Defendant Henry T. Pietraszek ("Pietraszek") avoided losses of \$563,875.20 by selling 61,400 shares of Ventana Medical Systems, Inc. ("Ventana") common stock from June 23 to June 28, 2000 after learning as a Ventana board member that Ventana was going to announce lower than expected earnings and take a write off for the second quarter of 2000.
2. Pietraszek directly and indirectly, has engaged and, unless enjoined, will continue to engage in transactions, acts, practices, and courses of business which constitute and will constitute violations of Sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §77q(a)(1), §77q(a)(2), and §77q(a)(3)] and violations of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §78j(b)] and Rule 10b-5 [17 C.F.R. §240.10b-5] promulgated thereunder.
3. The Commission brings this action to enjoin such transactions, acts, practices, and courses of business, and for other equitable relief, pursuant to Section 20(b) of the Securities Act

[15 U.S.C. §77t(b) and Sections 21(d), 21(e) and 21A of the Exchange Act [15 U.S.C. §§78u(d), 77u(e) and 78u-1(a)].

JURISDICTION AND VENUE

4. The Court has jurisdiction of this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa].

5. Pietraszek, directly and indirectly, has made use of the means and instrumentalities of interstate commerce and of the mails in connection with the transactions, acts, practices, and courses of business alleged herein within the jurisdiction of the Northern District of Illinois and elsewhere.

6. Pietraszek will, directly and indirectly, unless enjoined, have the opportunity to engage in the transactions, acts, practices, and courses of business set forth in this Complaint and in transactions, acts, practices, and courses of business of similar purport and object.

THE DEFENDANT

7. Pietraszek, age 54, resides in Chicago, Illinois and in Naples, Florida. Pietraszek was President and Chief Executive Officer (“CEO”) of Ventana from March 1997 through November 1999. From November 1999 through July 2000, Pietraszek was a member of Ventana’s board of directors (“board”). Currently, Pietraszek is President of his own company where he works as a consultant to diagnostic and pharmaceutical companies.

ENTITY INVOLVED

8. At all relevant times, Ventana was an Arizona corporation with its principal offices located in Tucson, Arizona. Ventana develops, manufactures and markets a broad range of laboratory instruments and systems. Ventana is a publicly held company, whose common stock

is registered pursuant to Section 12(g) of the Exchange Act [15 U.S.C. §78l(g)]. Ventana's stock is listed on the NASDAQ National Market.

FACTS

9. At all relevant times, Ventana had a policy which prohibited all directors, officers or any employees having material, non-public information relating to Ventana from trading Ventana stock.

10. In early June 2000, Ventana management recognized a problem with the dispensers it used to store and dispense reagents on most of its immunohistochemistry staining instruments.

11. On June 21, 2000, Ventana's Chairman and Vice Chairman met with Ventana's senior management to review the dispenser problem. During this review, Ventana management discussed the negative impact of the faulty dispensers on second quarter earnings and the need for a write off to account for the faulty products.

12. On June 22, 2000, Ventana senior management decided to schedule a special meeting of the Ventana board for the following week, during which the board would discuss Ventana's lower than expected earnings and management's recommendation that Ventana take a write off in the second quarter.

13. On or before June 23, 2000, Ventana's Vice Chairman contacted Pietraszek and told him that a special board meeting would be held on June 27, 2000 to discuss Ventana's lower than expected second quarter earnings and Ventana management's recommendation for a significant write off in the second quarter.

14. Pietraszek participated in the June 27, 2000 board meeting via telephone. At that meeting, the Ventana board discussed the lower than expected second quarter earnings and

Ventana management recommended that Ventana take a write off totaling almost \$12 million in the second quarter due to faulty products. Pietraszek was still present at the board meeting via telephone when the board approved management's recommendation for the write off.

15. On June 23, 26, 27 and 28, Pietraszek sold 600, 10,800, 15,000 and 35,000 shares of Ventana stock, respectively.

16. Pietraszek sold Ventana stock on June 23 through June 28, 2000 while in possession of material nonpublic information regarding Ventana's lower than expected earnings and write off in the second quarter.

17. At the time he sold Ventana stock on June 23 through June 28, 2000, Pietraszek knew that it was improper for him, as a Ventana board member, to sell Ventana securities while in possession of material, nonpublic information regarding Ventana's second quarter earnings shortfall and write off.

18. When he sold Ventana stock on June 23 through June 28, 2000, Pietraszek was aware that Ventana had an Insider Trading Policy prohibiting trading in Ventana stock while in possession of material, nonpublic information. Pietraszek knew that violating this policy could result in significant civil and criminal liability.

19. On June 29, 2000, Ventana publicly announced that it expected a second quarter operating loss between \$16 and \$20 million on revenue of approximately \$18 million due to an earnings shortfall and write off in the second quarter. At the close of the market on June 28, 2000, the last trading day preceding the announcement, Ventana common stock traded at \$28.50 per share. The day following the announcement, the Ventana stock price closed at \$23.50 per share.

20. As a result of his trading activities on June 23, 26, 27 and 28, 2000, Pietraszek avoided losses of approximately \$563,875.20 on the sale of 61,400 shares of Ventana common stock.

COUNT I

Violations of Section 17(a)(1) of the Securities Act [15 U.S.C. §77q(a)(1)]

21. Paragraphs 1 through 20 are realleged and incorporated by reference herein.

22. In June 2000, Pietraszek, in the offer or sale of securities, namely the sale of Ventana common stock, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly, employed devices, schemes or artifices to defraud.

23. As part of the conduct described in Paragraph 21 and 22 above, Pietraszek, in breach of his fiduciary and similar duty to Ventana and its shareholders arising from his position of trust and confidence, sold Ventana stock while he was in possession of material, nonpublic information regarding the impending public announcement of Ventana's lower than expected second quarter earnings and write off.

24. Pietraszek knew or was reckless in not knowing the facts and circumstances described in Paragraphs 21 through 23 above.

25. By reasons of the activities described in Paragraphs 21 through 24 above, Pietraszek violated Section 17(a)(1) of the Securities Act [15 U.S.C. §77q(a)(1)].

COUNT II

Violations of Section 17(a)(2) of the Securities Act [15 U.S.C. §77q(a)(2)]

26. Paragraphs 1 through 20 are realleged and incorporated by reference herein.
27. In June 2000, Pietraszek, in the offer or sale of securities, namely the sale of Ventana common stock, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly, obtained money or property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.
28. As part of the conduct described in Paragraph 26 and 27 above, Pietraszek, in breach of his fiduciary and similar duty to Ventana and its shareholders arising from his position of trust and confidence, sold Ventana stock while he was in possession of material, nonpublic information regarding the impending public announcement of Ventana's lower than expected second quarter earnings and write off.
29. By reasons of the activities described in Paragraphs 26 through 28 above, Pietraszek violated Sections 17(a)(2) of the Securities Act [15 U.S.C. §77q(a)(2)].

COUNT III

Violations of Section 17(a)(3) of the Securities Act [15 U.S.C. §77q(a)(3)]

30. Paragraphs 1 through 20 are realleged and incorporated by reference herein.
31. In June 2000, Pietraszek, in the offer or sale of securities, namely the sale of Ventana common stock, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly, engaged

in transactions, practices or courses of business which would and did operate as a fraud or deceit upon purchasers and prospective purchasers of such securities.

32. As part of the conduct described in Paragraph 30 and 31 above, Pietraszek, in breach of his fiduciary and similar duty to Ventana and its shareholders arising from his position of trust and confidence, sold Ventana stock while he was in possession of material, nonpublic information regarding the impending public announcement of Ventana's lower than expected second quarter earnings and write off.

33. By reasons of the activities described in Paragraphs 30 through 32 above, Pietraszek violated Sections 17(a)(3) of the Securities Act [15 U.S.C. §77q(a)(3)].

COUNT IV

Violations of Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 [17 C.F.R. §240.10b-5] promulgated thereunder

34. Paragraphs 1 through 20 are realleged and incorporated by reference herein.

35. In June 2000, Pietraszek, in connection with the purchase and sale of securities, namely the sale of Ventana common stock, by the use of the means and instrumentalities of interstate commerce and by the use of the mails, directly and indirectly: employed devices, schemes, and artifices to defraud; made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and engaged in acts, practices and courses of business which would and did operate as a fraud and deceit upon the purchasers and sellers of such securities.

36. As part of the conduct described in Paragraph 34 and 35 above, Pietraszek, in breach of his fiduciary and similar duty to Ventana and its shareholders arising from his position

of trust and confidence, sold Ventana stock while he was in possession of material, nonpublic information regarding the impending public announcement of Ventana's lower than expected second quarter earnings and write off.

37. Pietraszek knew or was reckless in not knowing the facts and circumstances described in Paragraphs 34 through 36 above.

38. By reason of the activities described in Paragraphs 34 through 37 above, Pietraszek violated Section 10(b) of the Securities Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 [17 C.F.R. §240.10b-5] promulgated thereunder.

PRAYER FOR RELIEF

THEREFORE, the Commission respectfully requests that this Court:

I.

Find that Pietraszek violated Sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §77q(a)(1), §77q(a)(2), and §77q(a)(3)].

II.

Find that Pietraszek violated Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)], and Rule 10b-5 [17 C.F.R. §240.10b-5] promulgated thereunder.

III.

Grant a Final Judgment and Order of Permanent Injunction, Civil Penalties, and Other Equitable Relief ("Final Judgment"), in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently restraining and enjoining Pietraszek, his agents, servants, employees, attorneys, and those persons in active concert or participation with him who receive actual notice of the Final Judgment by personal service or otherwise, and each of them, from directly or indirectly, by use of the means and instruments of transportation or communication in

interstate commerce or by the use of the mails, engaging in the unlawful transactions, acts, practices, and courses of business described above, or any conduct of similar purport or object, in violation of Sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §77q(a)(1), §77q(a)(2), and §77q(a)(3)] and Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)], and Rule 10b-5 [17 C.F.R. §240.10b-5] promulgated thereunder.

IV.

Grant an Order requiring Pietraszek to pay to the registry of this Court disgorgement of his ill-gotten gains plus prejudgment interest.

V.

Grant an Order requiring Pietraszek to pay to the Commission a civil penalty pursuant to Section 21A of the Exchange Act [15 U.S.C. §78u-1].

VI.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

VII.

Grant an Order for such further relief as the Court may deem appropriate.

Respectfully submitted,



Daniel R. Gregus
Pravin B. Rao
Helen A. Contos
Attorneys for Plaintiff
United States Securities and Exchange Commission
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Chicago, Illinois 60661
Telephone: (312) 353-7390

Dated: May 31, 2001

JS 44
(Rev. 12/96)**CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required to be filed by the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

United States Securities
and Exchange Commission

Cat 3
CCOK

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF COOK
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
Daniel R. Gregus, Pravin B. Rao, Helen A. Contos
U. S. Securities and Exchange Commission
500 West Madison - Suite 1400
Chicago, Illinois 60661 (312) 353-7390

DOCKETED **ATTORNEYS (IF KNOWN)**
Steven M. Malina
Ungarotti & Harris
JUN 01 2003 500 Three First Nat'l Plaza
Chicago, Illinois 60602 (312) 977-4400

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

<input checked="" type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

	PTF	DEF	
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation

IV. ORIGIN

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	Transferred from <input type="checkbox"/> 5 another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Magistrate Judge
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V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUS
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 446 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 780 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1935ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWV (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
			<input type="checkbox"/> 861 HIA (1935ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWV (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE.
DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Violations of Federal Securities laws: Section 17(a) of the Securities Act of 1933 (15 U.S.C. § 77q) and Section 10(b) of the Exchange Act (15 U.S.C. § 78j) and Rule 10b-5 (17 C.F.R. § 240.10b-5)

VII. REQUESTED IN COMPLAINT

CHECK IF THIS IS A CLASS ACTION
 UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint
JURY DEMAND: YES

VIII. This case is not a refiling of a previously dismissed action.

is a refiling of case number _____, previously dismissed by Judge _____

DATE

5/31/01

SIGNATURE OF ATTORNEY OF RECORD

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

JUDGE JOAN H. LEFKOW

MAGISTRATE JUDGE ROSEMOND

In the Matter of
U. S. Securities and Exchange Commission
v.
Henry T. Pietraszek

Case Number:

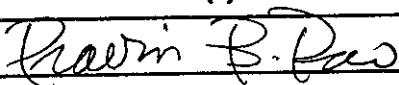
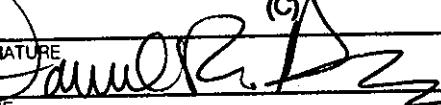
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APPEARANCES ARE HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY(S) FOR:

U. S. Securities and Exchange Commission

DOCKETED

JUN 01 2001

(A)		(B)	
<p>SIGNATURE </p> <p>NAME Helen A. Contos</p> <p>FIRM U. S. Securities and Exchange Comm.</p> <p>STREET ADDRESS 500 West Madison - Suite 1400</p> <p>CITY/STATE/ZIP Chicago, Illinois 60661</p> <p>TELEPHONE NUMBER (312) 353-7390</p> <p>IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 6224707</p> <p>MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></p> <p>TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/></p>		<p>SIGNATURE </p> <p>NAME Pravin B. Rao</p> <p>FIRM U. S. Securities and Exchange Comm.</p> <p>STREET ADDRESS 500 West Madison - Suite 1400</p> <p>CITY/STATE/ZIP Chicago, Illinois 60661</p> <p>TELEPHONE NUMBER (312) 353-7390</p> <p>IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 6230097</p> <p>MEMBER OF TRIAL BAR? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/></p> <p>TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/></p> <p>DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/></p>	
(C)		(D)	
<p>SIGNATURE </p> <p>NAME Daniel R. Gregus</p> <p>FIRM U. S. Securities and Exchange Comm.</p> <p>STREET ADDRESS 500 West Madison - Suite 1400</p> <p>CITY/STATE/ZIP Chicago, Illinois 60661</p> <p>TELEPHONE NUMBER (312) 353-7390</p> <p>IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 6193015</p> <p>MEMBER OF TRIAL BAR? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/></p> <p>TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></p> <p>DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/></p>		<p>SIGNATURE</p> <p>NAME</p> <p>FIRM</p> <p>STREET ADDRESS</p> <p>CITY/STATE/ZIP</p> <p>TELEPHONE NUMBER</p> <p>IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)</p> <p>MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input type="checkbox"/></p> <p>TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input type="checkbox"/></p> <p>DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/></p>	

PLEASE COMPLETE IN ACCORDANCE WITH INSTRUCTIONS ON REVERSE.